THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO.6186 of 1999

Dated: 06-04-2006

D. Vayunandan Rao.

..... PETITIONER

AND

The State of Andhra Pradesh, rep. by it's Principal Secretary, Hyderabad, and three others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION NO.6186 of 1999

ORDER:

The petitioner is a retired army personnel. He was discharged from army due to functional dyspepsia. After serving in the army from 1959-1966, he applied to Eluru Municipality (now Municipal Corporation) for allotment of house site. As he did not get a positive reply, he sent another representation dated 06-01-1995 informing that a portion of the land in block No.2, T.S.No.2 Railway Goods Shed Line, Eluru, was allotted to ex-service municipal employees, that plot is still vacant and he requested to allot the same. The fourth respondent considered the request and recommended to the second respondent. Ultimately the first respondent by memo dated 08-03-1996 rejected the proposal for allotment of municipal site to the extent of 252 sq.yards in favour of the petitioner. Aggrieved by the same, the present writ petition is filed seeking invalidation of the government memo and for a consequential direction to the respondents to allot 252 sq.yards in block No.2, T.S.No.2 to the petitioner.

The fourth respondent filed a counter-affidavit admitting the case of the petitioner. It is also stated that as the open land belongs to the government and vests only in the municipality for the purpose of alienation, a proposal was sent to the government for allotment. As the government has rejected the proposal, the land cannot be assigned to the private individuals. It is also the case of the fourth respondent that due to developmental activities in Eluru town, municipality proposed to set up executive branch officers, community development societies etc., under centrally sponsored schemes. A counter-affidavit was also filed on behalf of the respondents 1 to 3, by the Director of town and country planning. While denying the power of the municipality to allot plot to the petitioner, it is stated that the government has rejected the request of the petitioner after considering the report of the third respondent.

The learned counsel for the petitioner has placed reliance on the various government orders in support of the contention that the petitioner being an ex-army personnel is entitled for allotment of house sites free of cost or in the alternative at a reasonable nominal price.

This Court proposes to consider the said government orders one after the other.

G.O.Ms.No.80, Health, Housing and Municipal Administration Department, dated 23-05-1970, was issued to enable reservation of houses/house plots for defence personnel. A reading of the said G.O. would show that having regard to the advice of the Government of India, vide D.O. Letter No.10(20)/65-HM/1668, dated 08-12-1965, the

Government considered the proposal to reserve 15% of house plots/houses/flats built for sale of outright or on hire purchase bases to ex-service personnel. The suggestion of the Government of India was accepted and directions were issued to the executive agencies to implement the reservation in the order of priority mentioned in the said order. The G.O. nowhere suggests the allotment of house/house plots to ex-servicemen free of cost. Indeed the same is made applicable only in the housing schemes where the plots/houses are offered on outright sale or on hire purchase basis.

G.O.Ms.No.1181, Revenue (Assignment-I) Department, dated 25-11-1993, was issued by the Government of Andhra Pradesh directing all the District Collectors to provide house sites of 50/100 sq. yards within the same district to war widows and disabled ex-servicemen of the State free of cost. This G.O. was based on the recommendation of the Director of Sainik Welfare, Government of Andhra Pradesh. It appears that at the relevant time the Director reported that there are 81 war widows and 32 disabled ex-servicemen and a proposal was made to allot house sites free of cost. The proposal made was as a one time measure and therefore, the said act of the government directing allotment of house sites cannot be extended to the petitioner.

The third government order, being G.O.Ms.No.189, Home (General-B) Department, dated 30-06-1999, came to be issued in the context of Operation-Vijay in Kargil region of Jammu and Kashmir undertaken by the Indian Army during the year 1998-1999. This G.O. is extended to provide specific package of concessions to the families members of the Indian armed forces belong to Andhra Pradesh who are 'killed in action' or 'disabled in action'. The petitioner admittedly was discharged in the year 1966 and therefore, G.O.No.189 cannot be applied to him.

It is brought to the notice of this Court that the plot which the petitioner requested is in approved lay out and the municipality has already allotted five plots to ex-municipal employees. When such a proposal was sent by the municipal council to the government, the third respondent negatived the same on the ground that it is not desirable to allot the site to an individual. The government accepted the proposal and rejected the same. As rightly pointed out by the learned counsel for the petitioner when five plots in block No.2, T.S.No.2 were allotted by the municipality with the previous permission of the Government, there cannot be any objection to consider the request of the petitioner for allotment of the same on nominal value. The government has not considered the request of the petitioner from this point of view. Having regard to the fact that the petitioner has served the Indian Army, this Court is of the considered opinion that the government should consider the matter afresh keeping in view the observations made hereinabove.

The writ petition is accordingly disposed of directing the first respondent to consider the request of the petitioner in accordance with the recommendation made by the fourth respondent and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs.

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(**V.V.S.RAO, J**)

6th April, 2006.
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